REMARKS/ARGUMENTS

Reconsideration of this application is requested. Claims 1-18, 20-42, 45 and 46 are in the case. Claims 1-18, 20-40, 45 and 46 are withdrawn from consideration.

I. ELECTION/RESTRICTION

The election of Group V, claims 41 and 42, is hereby affirmed. The remaining claims in the case have been cancelled without prejudice.

II. THE ANTICIPATION REJECTION

Claim 41 stands rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent 5,736,531 to Von Borstel et al. That rejection is respectfully traversed.

Claim 41 recites that the "cytotoxic chemotherapy agent is not a pyrimidine nucleoside analog". The '531 patent is cited as allegedly describing the use of acyl derivatives of uridine, such as triacetyluridine, for ameliorating the toxicity of the cancer chemotherapy agent 5-fluorouracil *(5*-FU). The Examiner has taken the position that 5-FU is not a pyrimidine nucleoside analog "since it does not have a ribose unit". As discussed below, 5-FU is a pyrimidine nucleoside analog. Therefore the rejection is improper and should be withdrawn.

An ordinary meaning of the term "nucleoside analog" includes compounds that lack a ribose unit, such as 5-FU. The very reference cited in the rejection defines the term "nucleoside analog" to include 5-FU. Thus, the '531 patent states, "Examples of antineoplastic nucleoside analogs include... 5-fluorouracil(5-FU)... ." ('531 patent, col. 10, lines 29-3 1). As further evidence, the Examiner's attention is directed to the

attached copy of a journal article that also explicitly considers 5-FU to be a nucleoside analog. Khuri, et al. state, "We documented selective replication within tumor tissue; despite concomitant treatment with a DNA-damaging agent (cisplatin) and a **nucleoside analog (5-FU)** at therapeutic doses." Khuri, et al., Nature Medicine (August 2000) 6(8):879-885, at 883, left column, lines 18-20 (bolding added). As seen from the foregoing, 5-FU is a pyrimidine nucleoside analog in accordance with an ordinary usage of that term in the art.

The term "nucleoside" may sometimes be used in a way that requires a ribose unit. See U.S. Patent No. 6,642,206 (col. 5, lines 1-5) (copy attached). If any clarification is needed as to which usage is intended in accordance with the teaching of the subject application, the person of ordinary skill in the art would look to the application itself for direction. The subject specification invites the reader to refer to "Commonly owned application PCT/U596/10067" to learn about "the use of acylated pyrimidine nucleosides to reduce the toxicity of **chemotherapeutic** and antiviral pyrimidine nucleoside analogs." (US 2001/0016576, para. 0008) (bolding added). PCT/U596/10067, published as WO 96/40165, defines the term "nucleoside analog" to include 5-FU. It states, "Examples of antineoplastic nucleoside analogs include.. . 5-fluorouracil(5-FU)... ." (WO 96/40165, page 22, lines 9-1 1). Thus, the specification itself deliberately and clearly defines "nucleoside analog" to include 5-FU. Because 5-FU is a pyrimidine nucleoside analog, the '531 patent cited in the rejection does not read on claim 41.

In light of the above, it is clear that the outstanding anticipation rejection of claim 41 should be withdrawn. Such action is respectfully requested.

III. CLAIM 42

It is noted that claim 42 is free of the prior art. Since claim 41, upon which claim 42 depends, is not anticipated for the above-discussed reasons, it is believed that claim 41 and 42 are now in allowable condition. Early notice to the affect is respectfully requested.

Favorable action on this application is awaited.

Respectfully submitted,

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Attachments: Copy of Natural Medicine, Vol. 6, No. 8, (August 2000), pp. 879-885
Copy of U.S. Patent 6,642,206